

REMARKS

I. Status

Claims 1-29 are pending in the application, all rejected. Only claim 18 has been amended, to correct a typographical punctuation error.

II. Rejections Under 35 U.S.C. § 102(d) Over JP 2003334149

Claims 1, 3-5, 9-15, 17-20, 22, 24 and 28-29 stand rejected over Japanese patent publication 2003334149 (the Japanese publication), purportedly under 35 U.S.C. § 102(d). That provision of the patent statute states that:

“A person shall be entitled to a patent unless—... (d) the invention was first patented or caused to be patented, or was the subject of an inventor’s certificate by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor’s certificate filed more than twelve months before the filing of the application in the United States....”

The Japanese publication, however, is not “by the applicant,” nor was it “patented or caused to be patented... by the applicant or [her] legal representatives or assigns”; nor did any patent rights apparently arise out of the Japanese application, since the paper relied upon is merely a publication.

Applicants respectfully submit, therefore, that the reference is not available as prior art under the provision proffered; accordingly, the rejections of claims 1, 3-5, 9-15, 17-20, 22, 24 and 28-29 on this ground should be withdrawn.

However, even if the Japanese publication were treated as a prior art reference, it does not disclose the claimed invention. Independent claims 1, 15, and 17, specifically call out that the matting used in proximity to a base of a toilet be *disposable*. Disposability, as the present application makes clear, involves use of materials "such as those incorporated in diapers, feminine pads or panty liners, or other such articles" (application at page 4, lines 8-9) and most preferably avoid use of durable materials known for repeated, indefinite use (*id.*, lines 21-23).

The Japanese publication, however, fails to disclose this subject matter. To the contrary, it calls for a "simply replaceable mat for toilet." Replaceability does not disclose or even suggest disposability. Moreover, nothing in the Japanese publication suggests using disposable material, suggesting that the mat might very well be retained and re-used, perhaps in a re-conditioned state.

For this additional reason, the rejection over the Japanese publication of independent claims 1, 15, 17 and dependent claims 3-5, 9-14, 18-20, 22, 24 and 28-29, which also include the disposability limitation, should be withdrawn.

**III. Rejections Under 35 U.S.C. §§ 102(d) and 103(a)
Over JP 2003334149 and WO 2005/016085**

Claims 6, 23 and 25 stand rejected as obvious over the Japanese Publication in combination with PCT Publication WO 2005/016085 (the PCT Publication). The PCT publication is said to suggest that indicia in the nature of a foot would have been obvious. Applicants respectfully differ.

First, as discussed above, the ground for availability of the Japanese Publication has been respectfully submitted to be inappropriate and, even if it were not, the Japanese publication does not disclose the invention as recited in the independent claims. For this reason alone, the rejections lack merit and should be withdrawn.

In addition, however, the rejection supplies no motivation to combine the disclosures of the Japanese Publication and the PCT Publication. In fact, the failure of the Japanese Publication to teach or suggest disposability teaches away from a combination of that reference with the PCT Publication -- which does allude to disposability. For this additional reason, the rejections of claims 65, 23 and 25 should be withdrawn.

**IV. Rejections Under 35 U.S.C. §§ 102(d) and 103(a)
Over JP 2003334149 and U.S. Patent No. 5,123,130 to Sanders**

Claims 7, 8, 26 and 27 stand rejected as obvious over the combination of the Japanese Publication and U.S. Patent No. 5,123,130 to Sanders ("Sanders"). These claims involve the use of phosphorescent material in connection with the subject matter of the claims from which they depend.

Applicants, again, respectfully disagree. As discussed above, Applicant has submitted that the Japanese Publication is not effective prior art against the independent claims from which these rejected claims depend. The rejections, for that reason alone, should be withdrawn.

Sanders allegedly teaches the use of foot prints of a luminous nature employed in a bathroom environment. However, Sanders, like the Japanese Publication, fails to disclose a disposable device. Whether or not Sanders could be properly combined with the Japanese Publication (which Applicant does not concede it could), any such combination would not disclose the invention as claimed. But even urging the propriety of that combination tends to underscore that the Japanese publication does not disclose the recited disposability of Applicant's invention. For this additional reason, the rejections are without proper basis and should be withdrawn.

**V. Rejections Under 35 U.S.C. §§ 102(d) and 103(a)
Over JP 2003334149 and JP 2004016301**

Claims 2 and 16 have been rejected as obvious over the Japanese Publication in combination with JP 2004016301 ("the Second Japanese Publication"). Claims 2 and 16 involve an adhesive collar for adhering the periphery of a cut-away region to the toilet for creating a seal and preventing the mat from slipping.

The Second Japanese Publication is said to disclose this additional limitation. On its face, however, the Second Japanese Publication does nowhere disclose an adhesive. It is unclear how the "covering cloth" 3 remains in position. Items 51 and 52 of the figure in the Second Japanese Publication are not described and, if anything, appear to represent use of an attaching structure, rather than an adhesive.

Separately, the Second Japanese Publication's disclosure of a "covering cloth," and its putative combination with the (first) Japanese Publication, further underscore that both Japanese Publications do not disclose, but may even teach away from, the disposable mat disclosed and claimed in the present application. For this additional reason, the rejection of claims 2 and 16 should be withdrawn.

**VI. Rejections Under 35 U.S.C. §§ 102(d) and 103(a)
Over JP 2003334149 and U.S. Patent Pub. No. 2003/0135186**

Claim 21 has been rejected as obvious over the Japanese publication in combination with U.S. Patent Pub. No. 2003/0135186. Claim 21 involves use of an olfactory indicator. This feature is said to be disclosed by Olson et al. Whether or not this is so, Applicant objects to the combination of Olson with the Japanese Publication.

Whereas the Japanese Publication relates to a mat, Olson relates to wearable articles, which are not analogous to mats. Moreover, one of skill in the art would need to use Applicant's disclosure as a guide to pick and choose among the references, assuming without conceding the combination with Olson were otherwise proper, to arrive at Applicant's claimed invention. Such hindsight selection is not an appropriate basis for an obviousness rejection. Still further, the failure of the Japanese Publication to disclose a disposable mat further suggests that it cannot be combined with the Olson's wearable articles, which are explicitly disposable.

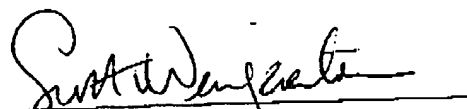
For these reasons, the combination of the Japanese Publication and Olson is respectfully submitted to lack merit. Accordingly, Applicants request the withdrawal of the rejections.

VII. Conclusion

Claims 1-29 of the Application are submitted, as now pending, to distinguish patentably over the art of record. The Commissioner is authorized to charge any fees required to maintain pendency of the above-captioned application to Deposit Account No. 23-1703.

Dated: August 3, 2006

Respectfully submitted,



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